



How effective is enforcement action against sham marriage?

Immigration by Relatives: MW 466

Summary

1. The Home Office (HO) defines a sham marriage or sham civil partnership as *'one where the relationship is not genuine but one party hopes to gain an immigration advantage from it. There is no subsisting relationship, dependency, or intent to live as husband and wife or civil partners.'*¹ The HO has said it considers sham marriage to be *'one of the most significant threats to immigration control.'*² Such marriages can provide UK residence rights to an entire family who would otherwise have no right to be here. ***There was a fivefold increase in reports of suspected sham marriages by registrars over the past decade and a 50% increase between 2012 and 2018.***³ This ongoing challenge to immigration control should be addressed by substantive changes to the law. In addition, loopholes which allow the de-facto recognition of proxy and polygamous marriages in the UK should be closed. A summary of proposals is at paragraph 27.

Regulation and enforcement

2. Around 35,000 marriages and civil partnerships each year involve a non-EEA national.⁴ Couples wishing to marry are required to give notice of intention to marry at a Designated Register Office if one partner is a non-EEA national. Previously, Immigration Compliance and Enforcement (ICE) teams liaised with registrars and attended marriages between EEA and non-EEA nationals in order to disrupt and investigate suspected shams. However, such visits ceased when provisions of the Immigration Act 2014, which introduced the 'compliant environment', came into force in March 2015.

3. There is a statutory duty on registry offices in England and Wales under section 24 of the Immigration and Asylum Act 1999 to report a suspicious marriage to the HO for a decision as to whether it is a potential sham. The former Independent Chief Inspector of Borders and Immigration (ICIBI) said in 2014 that *'many register offices refer few, if any, cases of suspected sham marriage to the HO, despite the fact that they have a statutory duty to do so. This means that a significant number of sham marriages may be going undetected.'*⁵ Information obtained by the Guardian through a freedom of information request showed that registrars sent 2,868 section 24 reports in 2018, a 40% rise since 2014, when there were 2,038.⁶ **Separate figures show this to be a 50% rise, from 1,891, in 2012 and a fivefold increase over a decade (from 561 in 2009).**⁷

Table 1: Reports of suspected sham marriages by superintendent registrars

Year	Section 24 report received from registrars annually
2008	344
2009	561
2010	934
2011	1741
2012	1891
2013	
2014	2038
2015	
2016	
2017	
2018	2868

Source: HO evidence to Parliament, 2013; FOI request by *The Guardian* published April 2019. Blank cells indicate years for which statistics do not appear to have been published.

4. These reports are one indicator of the number of suspected sham marriages taking place in the UK and should only be considered as a proportion of the total number of suspected sham marriages which take place every year. Of Section 24 reports in 2018, 1,618 (56%) were deemed worthy of investigation, compared with 1,439 (58%) in 2015.⁸ The top nationalities of non-EEA nationals referred in 2012 were Pakistani, Nigerian and Indian, who collectively accounted for 66% of referrals that year. Meanwhile, 57% of EEA citizens referred that year involved those from the UK, Hungary and Lithuania.⁹

5. The scale of recent enforcement efforts aimed at tackling sham marriage is unclear, as is the impact of the change in the law which took effect from March 2015 (see par. 6 below). In 2011 there were only 229 convictions in connection with marriage abuse cases.¹⁰ In 2015, the HO stated: *“There has been a significant increase in numbers of cases of sham marriages referred to the Crown Prosecution Service.”*¹¹ In 2017, immigration barristers referred to *“increasingly enthusiastic efforts of the Home Office to prevent abuse by non-genuine couples entering into ‘sham marriages’”*. However, it is unclear how effective recent enforcement has been at detecting and stemming this ongoing challenge.

6. The 2014 Immigration Act included new provisions which came into force in March 2015. In particular, the gap between notifying intent to marry and the ceremony was extended from 15 to 28 days and could be further extended to 70 days in order to allow the HO enough time to investigate the genuineness of the relationship. In addition, a couple that includes a non-EEA national who wish to marry in the Anglican Church in England or Wales must also follow civil preliminaries first. Although the HO has said that an individual’s immigration status does not determine their right to marry¹², failure to cooperate with the investigation will mean that the non-UK partner will not have permission to remain in the UK lawfully. Previous measures requiring a *‘certificate of approval’* from the HO for marriages involving non-UK partners were abolished in May 2011 after being struck down by the courts on the grounds that they

contravened Article 12 of the European Convention on Human Rights (*the right to marry and to found a family*).¹³

Potential scale of sham marriage

7. Sham marriages are contracted knowingly by both parties for the specific purpose of evading immigration control or gaining an easier route to citizenship. The HO states: *"The key factor in a marriage of convenience is the absence of intention of the married couple to be involved in a genuine and subsisting marriage or relationship akin to marriage and the creation of a family unit."*¹⁴ In September 2013, the Home Office named sham marriages as a **'significant problem'**, leading an estimated 4,000 to 10,000 immigration applications each year¹⁵ (this estimate has been questioned by the Free Movement legal website).¹⁶ The former ICIBI got the impression from talking to Home Office staff that the issue was **'more widespread'** than the figures suggested. He added in January 2014 that the threat posed to immigration control by sham marriage was **'increasing'**. An HO senior manager described the obtaining of residency through sham marriage as akin to a **'golden ticket'**.¹⁷ The HO also revealed that around half of referrals of cases of suspected sham marriage in 2012 involved non-EEA nationals who were here on a student visa.¹⁸

8. The HO has said that *'there is significant evidence to suggest that the phenomenon of sham marriage is linked with serious organised criminal activity'*.¹⁹ Criminal investigator guidance issued by the government in 2015 stated: *"Organised crime groups are often involved in large scale offending for sham marriages [and] the most appropriate penalty for all but the most minor offences of this nature is custody."*

9. Bogus marriages can also take place in other countries. In such circumstances, *'individuals arrange their own marriages of convenience, primarily through the internet where offers of participation are readily available, or through friends and family'*.²⁰ As part of training for criminal investigators, the HO suggested that organised crime groups could be charged as co-conspirators under Section 1 of the Criminal Law Act 1977 in connection with the following imaginary scenario: *"A groom is based in Pakistan and an EU bride travels to Pakistan to marry the groom - the EEA bride then travels to the UK to make a visa application for her husband to join her in the UK."*

10. There is a separate category of immigration marriage fraud, which is where one party deceives the other into believing they are in a genuine relationship in order to acquire permission to come to or remain in the UK. In many such cases once Indefinite Leave to Remain is obtained, the foreign spouse leaves the marriage within days. The scale of immigration marriage fraud is nebulous.²¹

EEA residence cards and EEA family permits

11. A significant means by which non-EEA bogus spouses have been able to legitimise their presence in the UK in the past is via application for residence cards on the basis of a marriage to a cooperative EEA citizen. The HO stated in 2015: *"In sham marriage cases the non-European Economic Area (EEA) party is fraudulently seeking confirmation of a right, conferred under EU law, which can ultimately lead to them being issued an EEA residence card for an initial period of five years. This gives them all the rights and entitlements given under EU law and could eventually lead to permanent residence and British citizenship."*

12. Such a sham marriage may result from the EEA national having agreed to form a bogus 'relationship' with a non-EEA national who is already in the UK. Otherwise, a non-EEA national can also enter the UK from abroad after obtaining what is known as an 'EEA family permit' from an overseas visa post, in which case the marriage would have been conducted abroad.

13. In 2013 the HO described this European pathway as *'the route of choice for those seeking to frustrate UK immigration control'*.²² One reason is because the rules relating to entry clearance and permission to stay for the spouses of EEA citizens are less stringent than those relating to British nationals. Unlike for British nationals or settled migrants, there is no income threshold or English language requirement and there is a considerably lower fee attached, yet those granted such permits can apply to settle permanently in the UK after five years. A person applying as the spouse of an EEA citizen can simply submit an EEA ID card, a marriage certificate and evidence that the EEA citizen is exercising free movement rights in order to qualify for a document. The bogus spouse acquires not only the right to reside in the UK, but the right to bring in children, grandchildren, parents and grandparents.²³ According to the House of Commons Home Affairs Select Committee, ***'one sham marriage can provide UK residence rights to an entire extended family who would otherwise have no right to be here'***.²⁴

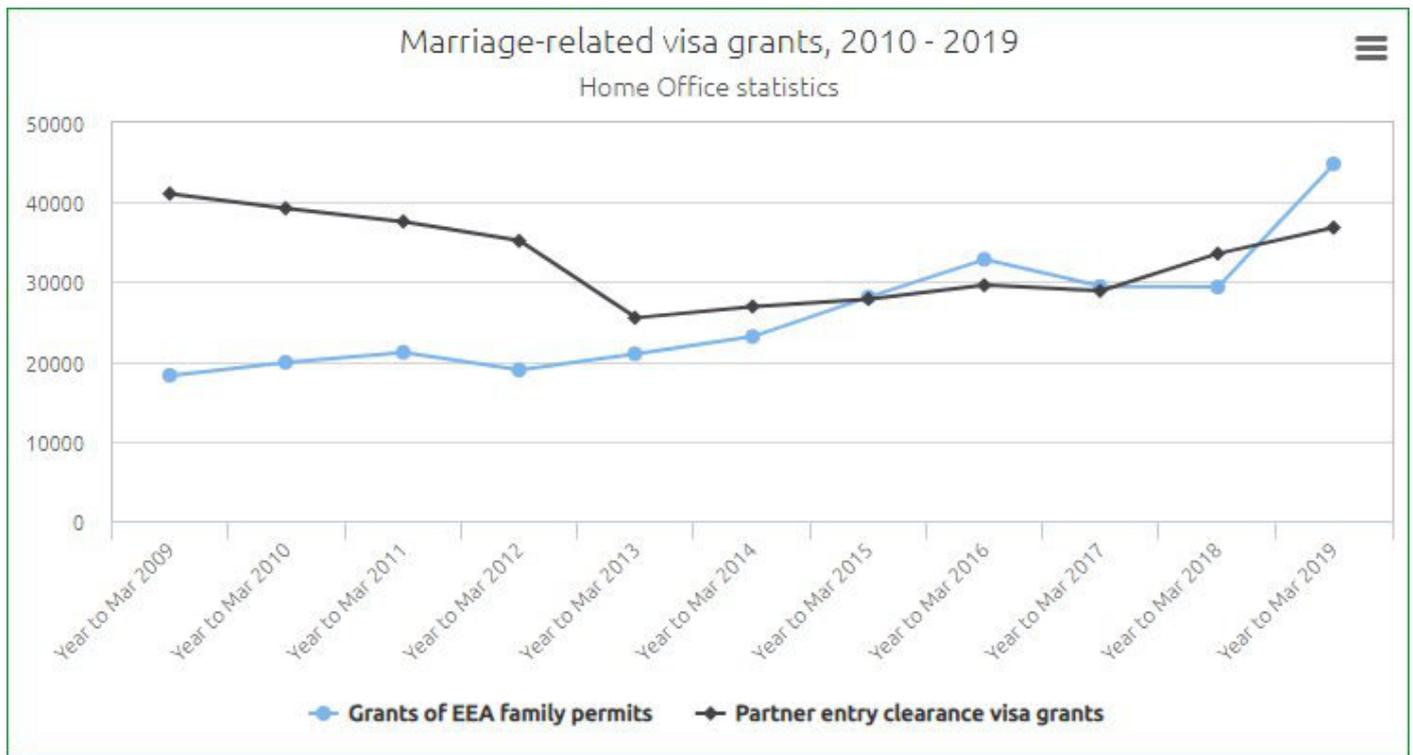
14. Some non-EEA applicants use this route to enter marriages of convenience because a residence card is a way of remaining in the UK and ensuring that existing immigration offences are set aside. The former ICIBI noted in June 2014 that HO staff *'expected abuse of the European Regulations to increase'*.²⁵ He found that 43% of the refusals for residence cards were from overstayers or illegal immigrants' and *'that it was common for the non-EEA national to make an application and, if refused, simply to repeat the application. Under EU law, there is no limit on the number of applications that can be made, and in the meantime no enforcement action can be taken if there is an application pending'*.²⁶

15. The fact that the number of EEA Family Permit grants (that is entry clearances issued to the non-EU family members of EU nationals) has more than doubled from 19,900 in the year to March 2010 to just under 45,000 in the year to March 2019 may be connected with changing patterns in the use of this route for the purpose of sham marriage (see figure 1 below). The more recent increase since 2016 is also likely to relate to a possible rush to obtain EEA family permits in the run-up to Brexit. Statistics regarding the share of EEA family permits that are obtained on the basis of a sham marriage each year do not appear to have been published. Further data is required. It should also be noted that an unknown share of EEA family permits will be issued for non-EEA national family members of EEA nationals *other than spouses or civil partners*. Unfortunately the HO do not publish a breakdown of the number of EEA family permits issued by type.

16. There is also an annual average of about 33,000 entry clearance grants obtained on the basis of applications for partner visas from outside the UK – that is visas for the non-EEA relatives of UK citizens and settled migrants, for which the rules are more stringent (as opposed to for EEA citizens residing in the UK). The graph below shows that the number of partner visas issued dropped following the introduction of tougher partner visa rules in 2012. However, the number issued in March 2019, (36,800) was higher than for any year since before those rule changes were introduced.

17. Separately (not shown on fig. 1 below), there are about 10,000 partner visa grants per year to people switching from family, work and other categories here in the UK.

Figure 1: Marriage-related visa grants, 2010 - 2019. Home Office statistics.



18. Sham marriages are frequently arranged by intermediaries ('fixers') for payment. In 2018, a sham marriage gang was jailed after its members made more than £500,000 by setting up immigrants with European brides so they could stay in the UK. Women from Eastern Europe are known to have been trafficked to the UK and exploited as sham brides for immigration offenders.

19. In April 2019, a spokesman from the Immigration Enforcement Criminal and Financial Investigation described '*sham marriage as a serious offence, designed to turn profit from abusing the UK's immigration laws*'. Recent jail sentences for such offences have been two-and-a-half years for the crime of conspiracy to facilitate illegal immigration.

20. Despite this, the government did not refer to need to tackle sham marriage in its December 2018 Immigration White Paper, nor did it make any proposals for doing so more effectively. No reference was made either to any possible post-Brexit arrangements with regards to EEA Family Permits.²⁷

Forced, proxy and polygamous marriages

21. There are 52,000 overseas visits by UK nationals each year for the purpose of marriage²⁸ (ONS figures, 2007-2015), although a number of these will relate to trips by two Britons going abroad to marry. If the couple follows the correct local process and then proceed to live with one another as spouses, the presumption is that the marriage is legal in the UK. Each party to the marriage must also have capacity to marry under the laws of the country in which they are domiciled at the time of the marriage. Currently, it is not necessary to register a foreign marriage in the UK for the purpose of obtaining a visa.

22. However, it is important to have evidence of the marriage, which will generally be the original marriage certificate. If the marriage certificate is not in English, then a certified translation of the

marriage certificate will need to be obtained. A partner visa or, EEA residence card or EEA family permit can then be obtained by producing this documentation.

23. According to charities, forced marriages involving UK nationals are often conducted overseas. It has been reported that British-Somali teenagers are being lured back to their parents' homeland under the pretence of family holidays then forced into such marriages, which are illegal in the UK. ²⁹

24. One type of overseas marriage that can lead to successful visa applications and is particularly anomalous is **proxy marriage**. A spot check by the HO in 2013 found that 19% of a sample of submitted marriage documents were by proxy.³⁰ Such marriages are conducted abroad, but it is **not** necessary for the couple to be physically present. Although such marriages would not be legal if conducted in the UK, a Court of Appeal decision in 2018 means that the law of England and Wales confirms that such marriages if they are valid under the principle *lex loci celebrationis* (law of the land).

25. The former ICIBI said in 2014 that 83% of the proxy marriages in a sample (29 cases) were refused because the marriage was considered invalid.³¹ As the current ICIBI has reported, many such marriages have involved the submission of fraudulent proxy marriage ceremony certificates.³² Indeed, the HO said in 2014: *"Such cases highlight the ease with which an EU citizen may become a victim of identity fraud and unwittingly 'sponsor' a non-EU national to reside in the UK without their knowledge, as a proxy marriage does not require the presence of the EU national (or indeed the non-EU national) at the ceremony."*³³ In February 2019, the government said: *"Marriages by proxy can be open to abuse and where encountered must be thoroughly investigated in line with guidance."*³⁴

26. Another anomaly is polygamous marriages. Polygamy is the practice of having more than one spouse at the same time. Despite the fact that polygamous marriages cannot be legally formed in the UK and that it is not legal for anyone domiciled in the UK to enter into a polygamous marriage abroad, **it has been estimated that there may be 20,000 polygamous marriages in Britain.**³⁵ The Coalition Government stated in 2011 that *'where a polygamous marriage is contracted outside the UK between parties, neither of whom is domiciled in the United Kingdom, it will be recognised'*.³⁶

27. However, as the House of Commons Library has noted, *'a UK resident cannot sponsor a non-EEA national for permission to enter or remain in the UK as their spouse if another person has already been granted such permission, and the marriage has not been dissolved'*.³⁷ Despite this, *'it is possible for all parties to a polygamous marriage to be legally present in the UK. For example, a second spouse may qualify for entry to the UK in a different immigration category, in their own right'*.³⁸

Recommendations for possible action

28. Below are recommendations for how detection and enforcement against abuse of the marriage-related immigration rules might be improved:

a) Tougher enforcement against sham marriages:

- i. More prosecutions targeted at individual abuse. The former ICIBI stated that those practising deception were generally not prosecuted unless organised criminal gangs were involved and that *'many staff, in both casework and enforcement, voiced concern at this historic lack of action'*.³⁹ There should be more prosecutions of individuals even when the offence falls outside the HO's definition of organised crime.

- ii. Reinstatement of routine attendance by ICE teams at the Designated Register Office stage for UK marriages. The ICIBI has said that stopping regular attendance by ICE teams at registry offices in 2015 '*created an impression... that the HO was less active in relation to sham marriage*'.⁴⁰ Another consequence was '*loss of intelligence about "fixers", who often attend sham ceremonies in the guise of a guest*'. Regular attendance by ICE teams should be reinstated and enforcement stepped up. As the House of Commons Home Affairs Committee has stated, '*intervening at or before the point of marriage will usually be the most effective way of tackling this growing problem*'.⁴¹
- iii. Use of profiling of certain nationalities in enforcement action. The ICIBI has recommended that the HO seek Ministerial agreement to add certain nationalities to the profiling approach on sham marriage as '*statistics indicate that certain nationalities are prominent in relation to shams*'.⁴² In December 2016, the HO said it accepted this recommendation.⁴³ However, it is not clear whether ministerial agreement has yet been given. If it has not, this should expedited.
- iv. The HO should ensure more effective removal of those refused EEA Residence Cards. In expediting this, the provision which states that an outstanding repeat application for an EEA residence card is a barrier to immediate removal should be reviewed and possibly repealed after Brexit. **The former ICIBI found that 72% of the refusals were repeat applications.**⁴⁴ The fact that both parties have valid passports should help to ensure that removal can be carried out.
- v. The government should also confirm that the *Metock* route will be closed after Brexit so that those who are here illegally do not get the right to stay in the UK simply by entering into a relationship with an EU national who is lawfully in the UK (for more information, see Annex A).
- vi. Reinstate the service whereby foreign marriage certificates can be deposited with the General Register Office in the UK (discontinued by the Foreign and Commonwealth Office in January 2014).
- vii. There should be more information provided to the public about the scale of this threat, both on the part of the government and via oversight bodies such as the Chief Inspector of Borders and Immigration and the National Audit Office.

b) Loopholes regarding proxy / polygamous marriages

- i. Legal loopholes that allow for the recognition in the UK of polygamous and proxy marriages conducted abroad should be closed.
- ii. The government should also implement the following House of Commons Home Affairs Committee recommendation: '*The burden of proof (currently on the state to prove that a proxy marriage is unlawful) should be on the couple (who are) applying for a residence card on the basis of a proxy marriage to prove the proxy marriage is lawful.*'⁴⁵
- iii. The government should place an obligation on public authorities to ensure that those in polygamous households and those who had a religious but not a legally recognised marriage, are made aware that they might be without legal protection - in line with proposals included in the Arbitration and Mediation Services (Equality) Bill, a Private Member's Bill introduced by Baroness Cox.

- iv. The government should implement the proposal by the Casey Review that all marriages taking place in the UK should be registered.⁴⁶ Currently, a claim to have been married in the UK must be supported by a marriage certificate issued by a Superintendent Registrar or an authorised minister of religion. In practice this allows a number of religious marriages to escape registration. An amendment along the lines suggested above would require reform of the Marriage Act so that it applies to all faiths and that faith institutions.
- v. Further consideration should also be given to the suggestion made by Baroness Cox in November 2016 that the celebrant of a religious marriage [should] be obliged to ensure that religious marriages are legally registered – with a potential custodial sentence for failure.
- vi. Following on from iv) and v) above, consideration should also be given to a requirement for all overseas marriages to be registered in the UK if spouse wishes to use that marriage as the basis of an immigration claim. This would strengthen safeguards against abuse.

c) Stronger efforts to tackle forced marriages

- i. As part of a crackdown on the illegal practice of forced marriage, victims should be able to object to spousal visas without disclosing their identities. In 2008, a report by the Home Affairs Committee said it was essential that forced marriage victims could object to visas without disclosing their identities. In 2012 the committee stated: *“We are disappointed by the lack of progress to resolve the issue.”*

Conclusion

29. Given that it has been previously named as a ‘significant’ and ‘increasing’ threat to immigration control, the recent silence from the government and oversight bodies regarding the recent scale of sham marriage, and the effectiveness of recent enforcement efforts aimed at tackling it, is troubling. In the words of the former (Labour) chair of the House of Commons Home Affairs Select Committee: *“Marriage is a precious institution and should not be hijacked to make a mockery of the law or our immigration system. We cannot afford for any town or city to become a back-door entry to our country.”*⁴⁷

30 August 2019

Annex A – The Metock and Surinder Singh routes

EU case law has given non-EU nationals rights to enter and remain in the UK which they would not otherwise have, for example through the *Metock* and *Surinder Singh* judgments.

The ***Metock*** judgment by the Court of Justice of the European Union in 2008 held that a non-EEA national in the UK unlawfully (for example, as an overstayer) is able to remain here if they form a genuine relationship with an EEA citizen.

Surinder Singh allows non-EEA nationals who are partners of UK nationals who have been exercising Treaty rights in another member state to become resident in the UK under EU, rather than UK, rules.

Notes

1. It is defined in statute under sections 24 and 24A of the Immigration and Asylum Act 1999, as amended by section 55 of the Immigration Act 2014. In contrast, under European Union law marriages of convenience are defined as marriages contracted for the sole purpose of obtaining a right of free movement and residence under Directive 2004/38/EC to which someone would not otherwise be entitled. The key factor in such a **marriage of convenience** is the absence of intention of the married couple to be involved in a genuine and subsisting marriage or relationship akin to marriage and the creation of a family unit. HO, 'Criminal investigation – sham marriage', 2015, URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/488521/Sham_Marriages_v1.0_EX_T_clean.pdf
2. Former Independent Chief Inspector of Borders and Immigration, 'Short Notice Inspection of a Sham Marriage Enforcement Operation', January 2014, p.3.
3. Figures compiled from Home Office submission to House of Commons EU Scrutiny Committee (January 2014), and *The Guardian*, 14 April 2019.
4. HO, Impact assessment of 2014 Immigration Act on sham marriages, (September 2013).
5. Former ICIBI, Jan. 2014, p. 2.
6. *The Guardian*, April 2019.
7. HO submission to Commons EU Scrutiny Committee (Jan. 2014).
8. *The Guardian*, April 2019.
9. HO, 'Sham marriages and civil partnership', November 2013, p. 45. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/256257/Sham_Marriage_and_Civil_Partnerships.pdf
10. Release following Freedom of Information Act request no 21379.
11. HO, 'Criminal investigation – sham marriage', 2015.
12. *Financial Times*, 11 September 2018.
13. HO, 'Sham marriages and civil partnership', November 2013, p. 13.
14. HO, Brief for HO staff on criminal investigation of sham marriage, August 2015, p.5.
15. HO Impact Assessment, September 2013, p. 1.
16. Colin Yeo, Free Movement Blog, December 2014.
17. Former ICIBI, Jan. 2014, pp. 2 & 14.
18. HO, Nov. 2013, p. 45.
19. HO submission to Commons EU Scrutiny Committee, 2014.
20. Ibid.
21. Immigration Marriage Fraud, <https://www.immigrationmarriagefrauduk.co.uk/>
22. Former ICIBI, 'The Rights of European Citizens and their Spouses to Come to the UK: Inspecting the Application Process and the Tackling of Abuse', June 2014, p.57.
23. From 1 February 2017 the rights of extended family members to come to the UK under EU law (ie relatives such aunts, nephews and cousins) only applies to relatives of the EEA national and not to relatives of the EEA national's spouse or civil partner.
24. HAC report, July 2014. For one recent legal perspective about who is included in the EU definition of 'extended family', see here: <https://immigrationbarrister.co.uk/extended-family-members-of-eea-nationals-in-eu-law/>
25. Former ICIBI, June 2014, p. 62.
26. HAC report, July 2014.
27. 'The UK's future skills-based immigration system', December 2018. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf
28. ONS figures released November 2017. <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/britishcitizensmarriedabroad>
29. The Times, 1 & 2 August 2018.
30. Former ICIBI, June 2014, p. 22.
31. Ibid.
32. ICIBI, December 2016, p. 8.
33. Home Office submission to House of Commons EU Scrutiny Committee (January 2014).
34. Home Office, Marriage Investigations, Feb. 2019. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778496/marriage-investigations-v3.0ext.pdf
35. Oxford Institute of Population Ageing, November 2015.
36. Hansard, Column 402W, 12 October 2011.
37. Section 2, Immigration Act 1988 and paragraphs 278 - 280 of the Immigration Rules.
38. House of Commons Library briefing paper, 'Polygamy', November 2018, p.10.
39. Former ICIBI, Dec. 2016, p.5.
40. ICIBI, December 2016, p. 5.
41. HAC, July 2014.
42. ICIBI, December 2016, p. 6.
43. Home Office response to ICIBI report, December 2016, p. 4.
44. ICIBI, June 2014, p.6.
45. HAC, July 2014.
46. Dame Louise Casey, 'The Casey Review A review into opportunity and integration',
47. December 2016, paragraph 8.50.
48. HAC, July 2014.